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19 **UNITED STATES DISTRICT COURT**

20 **DISTRICT OF NEVADA**

21 CIRENA TORRES, on behalf of herself and all  
others similarly situated,

Case No. 2:14-cv-02223-MMD-PAL

22 Plaintiffs,

23 vs.

24 KWONG YET LUNG CO., INC.  
(d/b/a International Marketplace), and DOES 1  
25 through 100, inclusive,

**[PROPOSED] ORDER GRANTING  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT AND SCHEDULING  
FAIRNESS (FINAL APPROVAL)  
HEARING**

26 Defendants.

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1       The Court has received the Stipulation and Settlement Agreement (the "Settlement  
2       Agreement"), entered into between plaintiff Cirena Torres ("Torres"), on behalf of herself and all  
3       others similarly situated, on the one hand, and defendant Kwong Yet Lung Co., Inc. (d/b/a  
4       International Marketplace) ("International Marketplace" or "Defendant"), on the other hand.

5       After reviewing the Agreement and other documents filed in support of the Motion For  
6       Preliminary Approval Of Class Action Settlement, and having considered the arguments by the  
7       respective parties, THE COURT HEREBY ORDERS THE FOLLOWING:

8       1.       For purposes of this Order, the Court adopts all definitions of terms set forth in the  
9       Settlement Agreement.

11       2.       The Court hereby grants preliminary approval of the proposed settlement upon the  
12       terms and conditions set forth in the Settlement Agreement. The Court preliminarily finds that the  
13       terms of the proposed settlement are fair, adequate and reasonable and comply with Rule 23(e) of  
14       the Federal Rules of Civil Procedure ("FRCP").

16       3.       The Court orders that the following Settlement Class is preliminarily certified for  
17       settlement purposes only:

18               "all consumers who, at any time during the period December 31, 2012 to December  
19               13, 2014 (the "**Settlement Class Period**"), were provided an electronically printed  
20               receipt at the point of a sale or transaction at the International Marketplace Store, on  
21               which receipt was printed more than the last 5 digits of the credit card or debit card  
22               number and/or the expiration date of the consumer's credit card or debit card."

24       4.       For the purposes of approving this settlement only and for no other purpose, the  
25       Court finds the proposed Settlement Class meets all of the requirements for certification under  
26       FRCP Rule 23. The Court further finds that, for purposes of the Settlement, the requirements of  
27       FRCP Rule 23(a) and 23(b)(3) are satisfied and that (a) the Settlement Class is ascertainable, (b)

1 the members of the Settlement Class are so numerous that joinder is impracticable, (c) there are  
2 questions of law and fact common to the Settlement Class members which predominate over any  
3 individual questions, (d) the representative plaintiff's claims are typical of the claims of the  
4 Settlement Class members, (e) the Class Representative and Class Counsel have fairly, adequately,  
5 reasonably and competently represented and protected the interests of the Settlement Class  
6 throughout the litigation, and (f) a class action is superior to other available methods for the fair  
7 and efficient adjudication of the controversy.  
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9       5.     The Court appoints plaintiff Cirena Torres as the Class Representative for the  
10 Settlement Class.

11       6.     The Court appoints attorney Chant Yedalian of Chant & Company A Professional  
12 Law Corporation and attorney Kenneth M. Roberts of Dempsey, Roberts & Smith, Ltd. as Class  
13 Counsel for the Settlement Class.

14       7.     The Court preliminarily finds that the settlement is the product of serious, informed,  
15 non-collusive negotiations conducted at arm's-length by the parties and with the assistance of the  
16 mediator Honorable Philip Pro (Ret.). In making these preliminary findings, the Court considered,  
17 among other factors, the potential statutory damages claimed in the lawsuit on behalf of plaintiff  
18 and members of the Settlement Class, Defendant's potential liability, the risks of continued  
19 litigation including trial outcome, delay and potential appeals, the substantial benefits available to  
20 the Settlement Class as a result of the settlement, and the fact that the proposed settlement  
21 represents a compromise of the Parties' respective positions rather than the result of a finding of  
22 liability at trial. The Court further preliminarily finds that the terms of the settlement have no  
23 obvious deficiencies and do not improperly grant preferential treatment to any individual member  
24 of the Settlement Class.  
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1       8.     The Court approves the proposed manner of the notice of settlement set forth in the  
2 Settlement Agreement. The Court also approves the size and contents of the Postal Notice, Store  
3 Notice, Full Notice, and Claim Form attached as Exhibits A, B, C, and D, respectively, to the  
4 Settlement Agreement.

5       9.     The Court finds that the proposed manner of the notice of settlement set forth in the  
6 Settlement Agreement, and the Postal Notice, Store Notice, Full Notice, and Claim Form which the  
7 Court approves of, as set forth in paragraph 8, above, constitute the best notice practicable under  
8 the circumstances and is in full compliance with the United States Constitution, FRCP Rule 23, and  
9 the requirements of due process. The Court further finds that the notice fully and accurately  
10 informs Settlement Class members of all material elements of the lawsuit and proposed class action  
11 settlement, of each member's right to be excluded from the settlement, and each member's right and  
12 opportunity to object to the proposed class action settlement and be heard at the Fairness (final  
13 approval) Hearing.

14       10.    Any Settlement Class member may request exclusion from the settlement contained  
15 in the Settlement Agreement. To request exclusion, a Settlement Class member must timely send to  
16 the Claims Administrator a written request for exclusion postmarked no later than sixty (60) days  
17 after the date the Store Notice is first posted at the International Marketplace Store (the "Opt-Out  
18 Deadline"). Settlement Class members who opt out of the Settlement Class by the Opt-Out  
19 Deadline: (i) will not be a part of the settlement contained in the Settlement Agreement; (ii) will  
20 have no right to receive any benefits under the settlement contained in the Settlement Agreement;  
21 (iii) will not be bound by the terms of the Settlement Agreement; and (iv) will not have any right to  
22 object to the terms of the settlement contained in the Settlement Agreement or be heard at the  
23 Fairness Hearing. Pending final determination of whether the proposed settlement should be  
24 approved, no Settlement Class member either directly, derivatively, in a representative capacity, or  
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1 in any other capacity, shall commence, maintain or prosecute against Defendant, any action or  
2 proceeding in any court or tribunal asserting any claim covered by the Settlement Agreement,  
3 unless and until such Settlement Class member excludes itself from the settlement by timely  
4 sending a request for exclusion to the Claims Administrator as set forth in this paragraph.

5       11. Any Settlement Class member, on his or her own, or through an attorney hired at  
6 his or her own expense, may object to the terms of the settlement. Any such objection must be  
7 filed with the Court and also served on Class Counsel and International Marketplace Counsel. To  
8 be effective, any such objection must be in writing and include the contents described in paragraph  
9 13, below, and must be filed and served no later than sixty (60) calendar days after the date Store  
10 Notice is first posted by International Marketplace. Any objections not raised properly and timely  
11 will be waived.

12       12. Any Settlement Class member, on his or her own, or through an attorney hired at  
13 his or her own expense, may object to Class Counsel's motion for an award of attorney's fees and  
14 costs and/or the Class Representative's motion for service (or incentive) award. Such motion will  
15 be posted by the Claims Administrator on the Settlement Website no later than thirty (30) days  
16 before the Fairness Hearing scheduled by the Court. Any objection must be filed with the Court  
17 and also served on Class Counsel and International Marketplace Counsel. To be effective, any  
18 such objection must be in writing and include the contents described in paragraph 13, below, and  
19 must be filed and served no later than twenty-one (21) days before the Fairness Hearing. Any  
20 objections not raised properly and timely will be waived.

21       13. To be effective, any objection described in paragraph 11 or paragraph 12, above,  
22 must contain all of the following information:  
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1                   A.        A reference at the beginning to this Action, *Cirena Torres, et al. v.*  
2 *Kwong Yet Lung Co., Inc. (d/b/a International Marketplace), et al.*, Case No. 2:14-cv-02223-  
3 MMD-PAL;

4                   B.        The objector's full name, address, and telephone number;  
5                   C.        A written statement of all grounds for the objection, accompanied by  
6 any legal support for such objection;

7                   D.        Copies of any papers, briefs, or other documents upon which the  
8 objection is based;

9                   E.        A list of all persons who will be called to testify in support of the  
10 objection; and

11                  F.        A statement of whether the objector intends to appear at the Fairness  
12 Hearing. If the objector intends to appear at the Fairness Hearing through counsel, the objection  
13 must also state the identity of all attorneys representing the objector who will appear at the  
14 Fairness Hearing.  
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16                  14.      Settlement Class members may ask the Court for permission to speak at the  
17 Fairness Hearing. Unless otherwise permitted by the Court, the Court will consider such a request  
18 from a Settlement Class member only if such a member timely files and serves a letter which states  
19 that it is the Settlement Class member's "Notice of Intention to Appear in *Cirena Torres, et al. v.*  
20 *Kwong Yet Lung Co., Inc. (d/b/a International Marketplace), et al.*, Case No. 2:14-cv-02223-  
21 MMD-PAL" and includes the Settlement Class member's name, current address, telephone  
22 number, and signature (a "Notice of Intention to Appear"). To be timely, a Notice of Intention to  
23 Appear concerning Class Counsel's motion for an award of attorneys' fees and costs and/or the  
24 Class Representative's motion for service (or incentive) award must be postmarked no later than  
25 twenty-one (21) days before the Fairness Hearing. To be timely, a Notice of Intention to Appear  
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concerning any other matter about the settlement must be postmarked no later than sixty (60) days after the date Store Notice is first posted at the International Marketplace Store. Any Notice of Intention to Appear must be sent by mail to the Clerk of the Court and to the Claims Administrator. Any Settlement Class member who fails to make a timely written Notice of Intention to Appear shall be foreclosed from speaking at the Fairness Hearing, unless otherwise ordered by the Court.

15. Class Counsel's motion for an award of attorneys' fees and costs shall be filed no later than thirty (30) calendar days before the Fairness (final approval) Hearing.

16. The Court will have continuing jurisdiction over the Action for the purpose of implementing the settlement until this Action and all related matters are fully resolved, and for interpretation and enforcement of the settlement, the Settlement Agreement and final order and Judgment thereafter.

17. The Court will hold a Fairness (final approval) Hearing on February 11, 2016 at 1:00 p.m.to consider the fairness, reasonableness and adequacy of the proposed Settlement as well as the award of attorneys' fees and costs to Class Counsel and service (or incentive) award to the Class Representative. The Court reserves the right to adjourn or continue the Fairness (final approval) Hearing without further notice to the Settlement Class members.

**APPROVED AND SO ORDERED:**

Dated: October 20, 2015



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HON. MIRANDA M. DU  
United States District Judge